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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 200.

THE NATIONAL BANK OF DAINGERFIELD, PLAINTIFF IN ERROR,

vs.

G. W. RAGLAND.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FOURTH JUDICIAL DISTRICT OF TEXAS.

FILED FEBRUARY 1, 1900.

(17,638.)

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1 & 2 *Caption.*

Be it remembered that there was begun and holden in the city of San Antonio, Bexar county, Texas, on Monday, the 3rd day of October, A. D. 1898, a term of the honorable court of civil appeals in and for the fourth supreme judicial district of Texas—present, Hon. J. H. James, chief justice; Hon. W. S. Fly and Hon. H. H. Neill, associate justices—when the following proceedings were had in a cause styled and numbered as follows:

THE NATIONAL BANK OF DAINGERFIELD, Appellant,
vs.
G. W. RAGLAND, Appellee. } No. 1808.

Appeal from the district court of Morris county, to wit:

3 *Caption.*

THE STATE OF TEXAS,
County of Morris.

At a term of the district court begun and holden at Daingerfield within and for the county of Morris, before the Hon. J. M. Talbot, and ending on the 29th day of October, A. D. 1898, the following cause came on for trial, to wit:

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } No. 1107.

Plaintiff's Original Petition.

Filed March 28th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Spring Term, 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } No. 1107.

To the Hon. J. M. Talbot, judge of said court:

Your petitioner, G. W. Ragland, who will be hereinafter referred to as plaintiff, complaining of and against The National Bank of Daingerfield, who will be hereinafter referred to as defendant, *plaintiff* represents to the court that he resides in Morris county, Texas, and that the defendant is a national bank organized and authorized to transact business under the acts of Congress, and has its office and place of business in Daingerfield, county of Morris, and State of Texas. For cause of action plaintiff represents and shows to the court that on Jan'y the 1st, 1895, he applied to the defendant for a loan of $340.00 in money, and that on the said 1st day of Jan'y, 1895, the plaintiff, together with several other parties, to wit,

J. B. Wilder, John L. Sheppard, J. E. Conly, J. M. Glover, J. W High, J. W. Phillips, E. M. Ragland, G. D. Hart, and J. W. Bolin and while said note appeared upon the face to be a joint and several obligation, yet in truth and in fact the plaintiff was the principal in said note, and the other parties above named were only sureties thereon, did make, execute, and deliver to the defendant their certain promissory note, in writing, payable to the order of the defendant for the sum of $390.00, due Jan'y the 1st, 1896, with interest, at the rate of 10% per annum, from maturity until paid, and 20% additional for fees if collected by an attorney.

That at the same time the defendant unlawfully charged and wrongfully added to the face of said note as interest until its maturity the sum of $42.00, the same being interest at the rate of 12% per annum, and that at the time the defendant so charged and added to the face of said note said sum of $42.00 as interest on said sum of $348.00 from Jan'y 1st, 1895, to Jan'y 1st, 1896, the defendant well knew that said sum was largely in excess of the legal rate of interest allowed by law, and that the said illegal interest was knowingly charged, reserved, and added in said note by said defendant; and again, to wit, on the 12th day of Nov'r, 1895, plaintiff applied to and obtained of defendant a loan of $26.25, and on said 12th day of Nov'r, together with G. D. Hart, J. W. Phillips, made, executed, and delivered to the defendant their certain promissory note in writing for the sum of $27.25, due and payable to the order of the defendant at Daingerfield, Texas, on the 1st day of Jan'y, 1896, and stipulates for 10 % interest after maturity and provides for 20 % additional for fees if collected by an attorney, and while said note appears on its face to be a joint and several obligation, yet in truth and in fact the pl't'ff was the principal maker and the said G. D. Hart and J. W. Phillips were the only sureties thereon; that at the time said note was so made, executed, and delivered to the defendant the defendant then and there knowingly reserved, charged, and added to the face of said note as interest the sum of one dollar on said $26.25 from said 12th day of November, 1895, to said 1st day of Jan'y, 1896; that at the time said sum of $1.00 was so reserved, charged, and added to the face of said note the same was so done knowingly, and the defendant well knew the same was at a usurious rate; and again, on the 23rd day of November, 1895, the plaintiff applied to and obtained of the defendant a loan of $15.00 and, together with J. W. Phillips and Ira P. Forsyth, executed and delivered to the def't their promissory note in writing for the sum of $16.00; that said note appeared on its face to be a joint and several obligation, but in truth and in fact the said J. W. Phillips and Ira P. Forsyth were only sureties thereon at the instance of plaintiff as principal, and that at the time said note was so made, executed, and delivered by the plaintiff to the defendant defendant reserved, charged, and added to the face of said note the sum of one dollar as interest on said $15.00 from said 23rd day of Nov., 1895, to said 1st day of Jan'y, 1896, said sum being largely in excess of the legal rate of interest provided for by law, and at the time said sum was so charged and added to said note by the de-

fendant the defendant did the same knowingly, and well knew the same to be at a usurious rate; and again, on the 11th day of Dec., 1895, plaintiff applied to and obtained of defendant a loan of $46.85
5 and, together with D. T. Colquitt and J. W. Phillips, executed and delivered to the defendant their certain promissory note in writing for the sum of $47.85, due Jan'y the 1st, 1896, and payable to the order of the defendant at Daingerfield, Texas, and bearing 10 % interest per annum from maturity until paid, and provides for an additional — of 20 % for fees if collected by an attorney; that while said note on its face appeared to be a joint and several obligation, yet in truth and in fact the plaintiff was the principal maker *in* said note, and the said D. T. Colquitt and J. W. Phillips were only sureties thereon; that on the said 11th day of Dec., 1895, and at the time said loan of $46.85 was obtained and said note for $47.85 was so executed and delivered by plaintiff to def't, the defendant knowingly reserved, charged, and added to the said sum of $46.85 so borrowed by plaintiff the sum of $1.00 as a matter of interest from said 11th day of Dec., 1895, to said 1st day of Jan'y, 1896, said sum being largely in excess of the legal rate of interest allowed by law, and the defendant well knew the same, and the defendant did then and there knowingly reserve and charge the same, knowing it to be a usurious rate. Plaintiff further represents and shows to the court that on Jan'y the 2nd, 1896, he, together with John L. Sheppard, J. B. Wilder, and J. E. Conly, made, executed, and — to the defendant their certain promissory note in writing for the sum of $722.57, due and payable to the order of defendant at Daingerfield, Texas, on the 1st day of Jan'y, 1897, said note appearing on its face to be a joint and several obligation, when in truth and in fact the plaintiff was the principal maker of said note, and the said John L. Sheppard, J. B. Wilder, and J. E. Conly were only sureties thereon. Plaintiff also shows to the court that said note was given as a renewal of the four first above-described notes, with the illegal and usurious interest added in said notes as above set forth, which illegal and usurious interest in said notes amounts to the sum of $45.00, and which notes, together with the illegal and usurious interest added therein, amounts to the sum of $481.10, and that on said 2nd day of Jan'y, 1896, and at the time of the execution and delivery to the defendant of the $722.57 notes hereinabove described, the plaintiff obtained of the defendant a loan of $116.50, which loan, together with the four first above-described notes, amounts to the sum of $597.60. Plaintiff further shows to the court that on the said 2nd day of Jan'y, 1896, and at the time he so renewed said four first above-described notes and obtained a loan
6 of the said sum of $116.50 he made, executed, and delivered to the defendant, together with John L. Sheppard, J. B. Wilder, and J. E. Conly, as above set forth, his certain promissory note in writing for the sum of $722.57, due Jan'y 1st, 1897, and payable to the order of defendant at Daingerfield, Texas, and bears 10 % per annum from maturity, and provides for 20 % additional for fees if collected by an attorney. Pl't'ff shows to the court that the four notes thus renewed, as above set out, on the said 2nd day of

Jan'y, 1896, amounted in the aggregate to $481.10, and the loan thus obtained of $116.50 amounts to the sum of $597.60, and on said 2nd day of Jan'y, 1896, and at the time of the renewal of said notes, aggregating the sum of $481.10, and obtaining the loan of $116.50, which notes and loan together amounts to the sum of $597.60, the defendant then and there knowingly reserved and charged and added to said sum as a matter of interest on said $597.60 from Jan'y 2nd, 1896, to Jan'y 1st, 1897, the sum of $125.00 and took plaintiff's note, as aforesaid, for the sum of $722.57, together with John L. Sheppard, J. B. Wilder, and J. E. Conly, as above set forth; which said note became due Jan'y 1st, 1897, and bore 10 % from maturity and 20 % additional for fees if collected by an attorney; that at the time, to wit, the said 2nd day of Jan'y, 1896, the defendant charged and added to the said sum of $597.60 the said sum of $125.00 as a matter of interest from Jan'y 2nd, 1896, to Jan'y 1st, 1897, the defendant well knew the same was largely in excess of the legal rate thus allowed by law, and well knew the same to be at a usurious rate. Plaintiff shows to the court that on, to wit, between the 1st day of Nov., 1896, and the 15th day of Feb'y, 1897, plaintiff paid on said note dated Jan'y the 2nd, 1896, for the sum of $722.57, and which became due Jan'y the 1st, 1897, the sum of $288.00, leaving a balance due of $434.43, for which sum the plaintiff, on the 15th day of Feb'y, 1897, together with John L. Sheppard, J. F. Jones, and J. E. Conly, executed and delivered to defendant their certain promissory note in writing, which note became due Jan'y 1st, 1898; and plaintiff shows to the court that on said 15th day of Feb'y, 1897, defendant did then and there knowingly reserve, charge, and add to the said sum of $434.43 as a matter of interest on said sum of $434.43 from said 15th day of Feb'y, 1897, to the 1st day of Jan'y, 1898, the sum of $52.14; and plaintiff says that at the time the defendant so charged and added said sum of $52.14, as interest on said sum of $434.43, it well knew the same to be largely in excess of the legal rate of interest allowed by law
7 and knew the same to be usurious. Plaintiff also says that from the face of said note it appeared to be a joint and several obligation, but in truth and in fact the plaintiff was the principal maker of said note and the said Sheppard, Jones, and Conly were only sureties thereon. Plaintiff further represents and shows to the court that on the 8th day of December, 1897, he paid on said note the sum of $27.50 and on Dec. 28th, 1897, he paid the sum of $50.00; Jan'y the 18th, 1898, he paid the sum of $150.00; Jan'y the 31st, 1898, the sum of $124.00, and on Feb'y the 13th, 1898, the plaintiff paid the remainder of said note, together with an additional sum of $4.25 as interest thereon from Jan'y the 1st, 1898, to said 13th day of Feb'y, 1898, which sum was in excess of the legal rate of interest allowed by law and which was usurious; all of which the defendant well knew at the time it so reserved, charged, and collected the same. Plaintiff further represents and shows to the court that on the 25th day of Feb'y, 1896, he applied to and obtained of the defendant a loan of the sum of $15.00 and executed and delivered to the defendant his promissory note in writing for the sum of $16.00 with J. W.

Phillips, which note was apparently a joint and several obligation, but in fact the said plaintiff was the principal in said note and the said Phillips was only surety thereon, which note became due on the 25th day of April, 1896, and payable to the order of the defendant at Daingerfield, Texas, defendant having knowingly charged, reserved, and added to said sum of $15.00, as a matter of interest from said 25th day of Feb'y, 1896, to said 25th day of April, 1896, the sum of $1.00, the same being largely in excess of the lawful rate of interest, and the defendant well knew the same to be usurious when it so charged, reserved, and collected the same; which note and interest plaintiff paid April 4th, 1896. Plaintiff further represents and shows to the court that on the 2nd day of Jan'y, 1896, he applied to and borrowed of the defendant the sum of $125.00 and executed and delivered to the defendant, together with J. W. Phillips, J. J. Phillips, J. C. Heard, and G. D. Hart, their certain promissory note in writing for the sum of $142.15 due Nov. the 1st, 1896, which note appeared as a joint and several obligation, but in truth and in fact the plaintiff was the principal maker and the other parties whose names appear as above set out were only sureties thereon, the defendant having charged and added to the said sum of $125.00 as a matter of interest thereon from said 2nd day of Jan'y, 1896, to said 1st day of Nov., 1896, the sum of $17.15, and
8 plaintiff says that at the time the defendant so charged and reserved and added to said sum of $126.92 the sum of $17.15 as a matter of interest thereon that defendant did same knowingly and well knew the same was illegal and usurious. Again on the 22nd day of May, 1896, plaintiff applied to and borrowed of defendant the sum of $12.50, and executed and delivered to the defendant his promissory note in writing, together with J. W. Phillips, B. A. Ragland, W. B. Willis thereon; which note appears from the face thereof to be a joint and several obligation, but in fact the said Phillips, Ragland, and Willis were only sureties for the plaintiff; which note became due Nov. 1st, 1896, and which was for the sum of $14.00, and bore interest at 10 % from maturity, and stipulates for an additional of 20 % for fees, if collected by an attorney. Said defendant on oending to plaintiff the said sum of $12.50 reserved, charged, and collected of plaintiff the sum of $1.50 as a matter of interest on said $12.50 from said 22nd day of May, 1896, to said 1st day of Nov., 1896, and defendant well knew at the time it so reserved, charged, and collected of plaintiff the said sum of $1.50 as interest on said sum that it was largely in excess of the legal rate of interest allowed by law, and that it was usurious. Plaintiff also represents and shows to the court that on the 3rd day of April, 1896, plaintiff borrowed of the defendant the sum of $30.00, and together with D. T. Colquitt and B. A. Ragland executed and delivered to the defendant their certain promissory note, in writing, for the sum of $33.00, due and payable to the defendant at Daingerfield, Texas, on the 15th day of October, 1896, the defendant having charged, reserved, and added to the said sum of $30.00, as a matter of interest, the sum of $3.00, and plaintiff says that at the time the defendant so charged, reserved, and collected of him said sum of

$3.00 that it well knew the same to be usurious. Plaintiff further says that from the face of said note the same appears to be a joint and several obligation, but in truth and in fact the said B. A. Ragland and D. T. Colquitt were only sureties thereon. Plaintiff further shows to the court that on the 9th day of Nov., 1896, that the defendant added the three last above-named notes or the amounts thereof together, which amounted in the aggregate to the sum of $189.15, and added thereto as a matter of interest the sum of $5.10, and the plaintiff, together with J. C. Everett, J. H. French, W. M. Willis, J. W. Phillips, R. B. Fielder, and J. C. Heard, — their certain promissory note, in writing, for the sum of $194.25, which became due Jan'y the 1st, 1897, defendant having charged and added to said note as a matter of interest the sum of $5.10 on said sum of $189.15 from said 9th day of Nov., 1896, to said 1st day of Jan'y, 1897; that the same was largely in excess of the legal rate and was usurious, all of which the defendant well knew. Plaintiff further says that from the reading of said above-described note the same appeared to be a joint and several obligation, but in fact the plaintiff was the principal in said note, and the other parties whose names are set out above are only sureties thereon. Plaintiff further shows and represents to the court that on the 22nd day of Sept., 1897, plaintiff again renewed said note to def't, together with E. M. Ragland, J. W. Phillips, R. B. Fielder, W. B. Willis, J. A. Wise, J. C. Everett, J. J. Phillips, J. C. Heard, and J. H. French, defendant having charged as a matter of interest on said sum of $194.25 from Jan'y the 1st, 1897, to 1st day of Feb'y, 1898, the sum of $25.55, and took plaintiff's note for the sum of $219.80, due and payable to the defendant Feb'y 1st, 1898. Plaintiff says that at the time the defendant so charged, reserved, and added said sum of $25.55 as a matter of interest to said note of $194.25 from said 1st day of Jan'y, 1897, to said 1st day of Feb'y, 1898, it well knew the same to be illegal and usurious. Plaintiff further says that said note on its face appears as a joint and several obligation, but in fact the plaintiff is the principal maker in said note and the parties thereto as above named are only sureties thereon, and on the 13th day of Feb'y, 1898, the plaintiff paid said note, with an additional interest of 90 cts. accrued thereon from said 1st day of Feb'y, 1898, to said 13th day of Feb'y, 1898, defendant having charged, reserved, and collected of the plaintiff said sum of 90 cts., as above set out, and done it knowing that the same was illegal and usurious. Plaintiff further shows to the court that since the 20th day of March, 1896, he has paid to the defendant the sum two hundred and seventy-eight and $\frac{67}{100}$ — as interest on the several and various sums of money borrowed from defendant as set forth in this petition, and that at the time said money was loaned plaintiff by defendant and the interest reserved and charged by defendant and at the time plaintiff paid same to the defendant defendant knew that the said interest received, reserved, charged, and collected by it was illegal and usurious and greatly in excess of the legal rate of interest; and for the above set out prem-

ises plaintiff says defendant is indebted to him in the sum
10 of four hundred and fifty-seven and $\frac{34}{100}$ dollars, and for which sum plaintiff brings this suit. Wherefore plaintiff prays that citation issue to defendant commanding it to answer this petition, and upon final trial he have his judgment for said sum of $557.34 and for costs of suit and for general and special relief, and, as in law and equity entitled him, he will ever pray.

SHEPPARD, JONES & BOLIN,
Att'ys for Plaintiff.

Filed March the 28th, 1898.

J. W. PHILLIPS,
District Clerk.

Defendant's Original Answer.

Filed April 11, 1898. J. W. Phillips, District Clerk.

In the District Court of Morris County, Spring Term, 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

And now comes the defendant in the above cause, by and through its attorney, and only for the purpose of presenting and urging this motion enters its appearance in said cause, and says that the citation and service had upon it in this cause is not sufficient to require it to answer herein because, 1st, said citation does not state any cause of action against defendant; 2nd, said citation, in stating the nature of plaintiff's demand, does not show any cause of action, in that it does not allege that defendant knowingly received or collected usurious interest from plaintiff, and is otherwise vague and indefinite.

J. M. MOORE AND
HENDERSON & ROBISON,
Att'y- for Defendant.

And subject to its motion to quash and for answer to the merits of plaintiff's suit, defendant says that plaintiff'- cause of action as declared on by him is wholly insufficient, and of this the defendant prays judgment.

HENDERSON & ROBISON &
J. M. MOORE, *Att'ys for Def't.*

And for further answer, subject to its motion to quash, defendant denies each and all the allegations of plaintiff's petition and demands strict proof.

HENDERSON & ROBISON &
J. M. MOORE, *Att'ys for Def't.*

11 And for further answer defendant says that if it ever received or collected from plaintiff any unlawful interest that

it did so more than two years next preceding the filing of plaintiff's suit, and that plaintiff's cause of action, if any he ever had, was barred by limitation when sued on, and defendant here pleads limitation in bar of plaintiff's suit.

J. M. MOORE &
HENDERSON & ROBISON,
Def't's Attorney.

And for further answer herein defendant shows that heretofore, to wit, on the 26th day of Jan'y, 1895, that the plaintiff made and delivered his promissory note in writing to W. B. Womack and Son, whereby he promised, agreed, and became liable to pay to the order of W. B. Womack & Son or bearer, at the town of Daingerfield, Texas, the sum of one hun- and twenty-nine and $\frac{75}{100}$ dollars, which sum was to be paid on or before Nov. the 1st, 1895, and for 10% interest per annum thereon from the date of said note until paid, and 20% in addition thereto for attorneys' fees, if collected by an attorney; that on the — day of ——, A. D. 1898, that the said W. B. Womack & Son, for a good and valuable consideration, transferred and delivered said note to defendant, and that said note is now the property of the defendants, who is the legal holder thereof; that said note is long since past due, and the plaintiff has not paid the same or any part thereof, and still fails and refuses to pay same, although often requested so to do; that defendant has had to place the same in the hands of an attorney for collection. Wherefore it prays for judgment against plaintiff for the amount of said note, principal, interest, and attorneys' fee, and that said sum be offset against any sum, if any, which plaintiff may recover herein.

J. M. MOORE &
HENDERSON & ROBINSON,
Att'ys for Def't.

Filed April the 11th, 1898.

J. W. PHILLIPS,
District Clerk.

Statement of Facts.

Filed Nov. 8th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County.

GEORGE W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

12 Be it remembered that upon the trial of this cause the following is the statement of facts as proven:

G. W. RAGLAND, being sworn, *and* testified in his own behalf and said his name was G. W. Ragland; he was the plaintiff in this case; that he knew the defendant; that on Jan'y the 1st, 1895, he applied to the defendant for a loan of $348.00 for 12 months. Defendant then

and there agreed with plaintiff to loan him the said sum of $348.00 for 12 % interest per annum, and defendant prepared a note for plaintiff to make, and said note was dated Jan'y 1st, 1895, due Jan'y 1st, 1896, and was for the sum of $390.00. Defendant added in the face of the note as interest the sum of $42.00 for the time the note was to run—that is, from Jan'y 1st, 1895, to Jan'y 1st, 1896, and 10 % interest per annum from maturity. I made the note and delivered it to defendant and it paid me in cash $348.00. Defendant added the $42.00 in the face of the note as interest on the loan for the 12 months; the note was to run to maturity, and the cashier knew at the time that said $42.00 was added that it was being added as interest for the loan of the $348.00 for 12 months. I did not pay this note when it matured or any part of it; but on Jan'y 2nd, 1896, I renewed it and made the renewed note due Jan'y the 1st, 1897. On Nov. 12th, 1895, I borrowed from defendant $26.25 and gave my note, due Jan'y 1st, 1896, for $27.25; there was one dollar added by defendant in the face of the note as interest for the use of the said $26.25 from the date of the note to its maturity, and defendant knew at the time it added the $1.00 to the face of said note that it was adding it as interest. I did not pay this note at maturity or any part of it; but on Jan'y 2nd, 1896, it was added in another note I gave defendant due Jan'y 1st, 1897. On Nov. 23rd, 1895, I borrowed from defendant $15.00 and gave it my note, due Jan'y 1st, 1896, for $16.00; there was one dollar added by defendant in the face of the note as interest for the use of the said $15.00 from the 23rd day of Nov., 1895, to Jan'y 1st, 1896. Defendant knew at the time it added the one dollar to the face of said note at maturity or any part of it *out* it was added in a note I gave defendant date-Jan'y 2nd, 1896, due Jan'y 1st, 1897. On Dec. 11th, 1895, I borrowed from the defendant $46.85 and gave it my note, due Jan'y 1st, 1896, for $47.85. The defendant added $1.00 in the face of said note as interest on the $46.85 from Dec. 11th, 1895, to Jan'y 1st, 1896. Defendant knew at the time it was adding the one dollar to the face of said note that it was adding it as interest. I did not pay this note at ma-
13 turity or any part of it, but it was added in a note I gave defendant dated Jan'y 2nd, 1896, due Jan'y 1st, 1897. On Jan'y 2nd, 1896, I made and delivered to defendant my promissory note for $722.57, due Jan'y 1st, 1897. That note was made up with the four notes above mentioned to the amount of $481.10, which is the aggregate amount of said four notes, in which is included the principal and interest of said notes up to their date of maturity, Jan'y 1st, 1896, and the sum of $164.00, at that time borrowed in cash, and the sum of $77.47 added in the face of said note as interest from Jan'y 2nd, 1896, to Jan'y 1st, 1897. The date of the maturity of said note def't added the $77.47 to the amount, $481.10, renewed and the amount borrowed, $164.00, as interest, and knew that it was adding said amount as interest for the use of said renewal and loan from Jan'y 2nd, 1896, to Jan'y 1st, 1897; that between Nov. 1st, 1896, and 15th Feb'y, 1897, plaintiff paid defendant in cash on said note $288.14, which left a balance due on said note of $434.43. On

Feb'y 15th, 1897, plaintiff gave the defendant a new note, due Jan'y 1st, 1898, in lieu of the note due Jan'y 1st, 1897, for the balance due of $434.43, and the defendant added to said amount of $434.43 the sum of $52.13 as interest on said note from Jan'y 1st, 1897, to Jan'y 1st, 1898, in the face of said note and took plaintiff's note for the sum of $486.56. Defendant added said amount of $52.13 in the face of said note as interest, knowing that it was adding said amount as interest to said note; that on Dec. 8th, 1897, he paid defendant on said note $150.00, and again, on Feb'y 13th, 1898, he paid the said defendant the balance due on said note, $135.06; also at the same time paid defendant $4.25 as past-due interest on the balance due on said note after its maturity until final payment, Feb'y 13th, 1898; that defendant knew that it received the $4.25 as past-due interest, and it knowingly received and collected all the interest that was added in the several notes hereinabove mentioned. On Feb'y 25th, 1896, plaintiff borrowed from defendant the sum of $15.00 and gave defendant his note for the sum of $16.00, due April 25th, 1896. The defendant added $1.00 in the face of said note as interest for the use of said $15.00 from Feb'y 25th, 1896, and knew at the time that said $1.00 was being added as interest, and on April 4th, 1896, plaintiff paid defendant $16.00 and took up said note; that defendant knew at the time it received the said $16.00 that $1.00 of said amount was being received and collected by it as interest
14 on the above-mentioned loan. On Jan'y 2nd, 1896, plaintiff borrowed from defendant the sum of $125.00, and made and delivered to defendant his note for the sum of $142.15, due Nov. 1st, 1896. At the time of borrowing said money defendant added in the face of said note $17.15 as interest for the use of said money so borrowed until maturity, Nov. 1st, 1896; that defendant knowingly added said sum to said amount borrowed as interest. Plaintiff did not pay this note at maturity or any part thereof. On May 22nd, 1896, plaintiff borrowed from defendant the sum of $12.50, and made and delivered to defendant his note for $14.00, due Nov. 1st, 1896. At the time of borrowing said money defendant added in the face of said note $1.50, as interest for the use of said money so borrowed until maturity, Nov. 1st, 1896. That defendant knowingly added said $1.50 to the amount borrowed as interest. Plaintiff did not pay this note at maturity or any part thereof. On April 3rd, 1896, pl't'ff borrowed thirty dollars from the defendant, and gave the defendant his note for the sum of $33.00, due Oct. 15th, 1896. At the time of borrowing said $30.00, as interest for the use of said money so borrowed until maturity, October 15th, 1896, that defendant knowingly added said $3.00 to the amount borrowed as interest. Plaintiff did not pay this note at maturity or any part thereof. On Nov. 9th, 1896, plaintiff made and delivered to defendant his promissory note for the sum of $194.25, due Jan'y 1st, 1897. This note was given to def't in renewal of the three above-described notes, which three notes aggregated $189.15, and the sum of $5.10, which amount was added in the face of said note as interest from the date of renewal, Nov. 9th, 1896, to date of maturity, Jan'y 1st, 1897, which make the face of the note $194.25.

That defendant knowingly added said sum of $5.10 to the amount of the renewed note as interest. Plaintiff did not pay this note at maturity or any part thereof. Again, on Sept. 22nd, 1897, plaintiff renewed the note of $194.25 that he gave defendant, and matured Jan'y 1st, 1897, by executing and delivering to defendant his note for $219.80, due Feb'y 1st, 1898, and defendant added as interest on said note from its date of maturity, Jan'y 1st, 1897, to its extended time, Feb'y 1st, 1898, the sum of $25.55, making the note on its face for $219.80. That the defendant knowingly added said $25.55 to said note as interest; and on Feb'y 13th, 1898, plaintiff paid defendant the amount of said note, together with 90 cents as past-due interest from Feb'y 1st, 1898, to Feb'y 13th, 1898. That defendant received, charged, and collected said past-due interest, 90 cents, and the interest added in the face of said notes knowingly; that it was interest that was added to and collected on said notes. Plaintiff had a positive contract with the defendant at the time of borrowing the different sum- of money that the defendant was to let him have the money at 12% interest per annum: that he has paid defendant two hundred and thirty-three and $\frac{5}{100}$ dollars as interest on the several loans and renewals, as stated. Each and all the notes given to defendant by plaintiff drew 10% interest after maturity, but the interest before maturity was all added in the face of the note, and was added at the rate of 12% per annum on the amount I borrowed of those larger loans. In those small loans the rate of interest was more than 12% per annum. Each and all the loans were made to me. The names of the other parties on the different notes were only my sureties. I have paid the defendant all I owed it. I gave my sureties a mortgage to secure them for their suretyship for me. I wrote the mortgages myself. I gave a mortgage direct to the bank to secure the loans of Jan'y, 1896, of $722.57, and the loan of Feb'y, 1897, of $486.56. Said mortgages were recorded. The transaction was had with the cashiers of the bank. J. F. Jones was cashier in 1895, J. C. Jenkins in 1896 and 1897, and J. Y. Bradfield in 1898. The rate of interest defendant charged me in each loan was more than 10% per annum; that in each of said loans obtained from the bank plaintiff would take the note prepared by the bank out and make it and return it to the bank; that the rate of interest charged by the defendant for the several loans was at a greater rate of interest on the said loans respectively than 10% per annum.

J. F. Jones was the next witness offered by plaintiff, who testified as follows:

I was cashier of defendant's bank in 1895 and until Jan'y 18th, 1896. I made the loan to plaintiff testified to by him in Jan'y, 1895, as such cashier. We agreed to loan him $348.00 for 12 months, at 12% interest per annum. J. Y. Bradfield was president of the bank at that time. I consulted him about the loan before it was made, and he instructed me to make it on those terms. I made all the small loans to plaintiff, as he has testified to, during

the year 1895 as defendant's cashier. We showed the plaintiff favors in the large loan that we did not show other borrowers. I was cashier when the note for $722.57 was taken by defendant. That note was given in renewal of several of plaintiff's notes held by defendant, and the sum of $165.00 added to said amount that was renewed. This loan defendant agreed
16 to make for 12 % interest per annum from date until maturity. Defendant always added the interest in the face of the note that was charged by it to the date of the maturity of the note in each of the several loans made to plaintiff by defendant, through myself as cashier. The several amounts testified by the plaintiff as being added to the face of said note as interest was added knowingly that same was interest.

J. C. JENKINS testified as follows:

I have been connected with the bank since its organization. I was its cashier from Jan'y 18th, 1896, to Jan'y 1st, 1898. During the year 1896 defendant made several loans to plaintiff. I do not remember that I ever had a positive agreement with plaintiff as to the rate of interest defendant would charge him. When defendant would make him a loan I would fix up a note and give it to plaintiff to be signed up, and when it was brought in I would take out a certain amount as interest, and in no case less than one dollar. I always taken out said amount knowingly. The amounts reserved by def't is the same as testified to by plaintiff. Plaintiff paid me in the fall of 1896 on his indebtedness to defendant $288.14, and renewed his note for the balance, and in the fall of 1897 he paid me several times on his indebtedness. The amount shown on the back of this note and testified to by plaintiff is correct. The def't has declared an annual dividend of 10 % and carried from one to two thousand dollars to the surplus every year, except last year it only carried about $400.00 to the surplus fund. The capital stock is $50,000.00. The surplus now is $7,000.00. The dividend is never declared until all expenses is paid.

Dr. J. Y. BRADFIELD testified as follows:

I have been the bank's president ever since its organization until Jan'y 1st, 1898. I am now its cashier. I do not know anything about the loans to plaintiff except what the books of the bank show. I was frequently consulted about loans made by Mr. Jones while he was cashier; also Mr. Jenkins. I know it was our universal custom to discount all paper that we took. The books show each day's business by showing the amount of the note—the amount of discounts as that day's earning—and the books so showed these transactions with plaintiff. The small loans made plaintiff and a charge of $1.00 is not intended as interest, but is to pay expenses and stationery accounts and to accommodate the borrower. The defendant will loan a borrower $100.00 for 30 days for $1.00 or $10.00 for 30 days for $1.00.
17 Mr. Jones, our cashier, in 1895 had been an attorney-at-law, and one of the objects the bank had in employing him at a

salary of $100.00 per month was for his legal ability. Plaintiff gave the bank and his sureties mortgages to secure those large loans made to him. The defendant had an account with the county clerk and paid him to record them mortgages.

Defendant introduced a note given by plaintiff to W. B. Womack and Son or bearer, dated Jan'y 26th, 1895, due Nov. 1st, 1895, for $129.75 and 10% interest per annum from date, and 20% additional for attorneys' fees, if collected by an attorney.

Defendant introduced the file-mark of plaintiff's original petition, which is March 28th, 1898.

The parties to the above-entitled cause having failed to agree upon a statement of the facts proved on the trial thereof, and having presented to me their respective statements, *and* certify that the above and foregoing statements is a substantially true and correct statement of all the facts proven on the trial of said cause, and order the same filed as a part of the record in said cause.

J. M. TALBOT,
Judge 5th Judicial Dist.

Filed Nov. the 8th, 1898.

J. W. PHILLIPS,
District Clerk.

Special Issues of Findings Thereon.

Filed Oct. 27th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Texas, October Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

GENTLEMEN OF THE JURY: In this case you will not return a general verdict, but instead thereof will answer the questions submitted below, and one of your number will sign his name at the end of such questions and answers as foreman, and such questions and answers will constitute your verdict herein. You are the exclusive judges of the credibility of the witnesses and the weight to be given to the testimony.

18

J. M. TALBOT,
Judge of the 5th District.

Question 1st. Did the plaintiff borrow and receive from the defendant the several sums of money, as alleged and specified in his petition, and execute and deliver to defendant his promissory notes of such sums respectively as in said petition alleged?

Answer. Yes.

Question 2. Did plaintiff sign said notes as the principal obligor therein and the other parties respectively as sureties?

Answer. Yes.

Question 3. Was there any rate of interest specified as such in the

said several notes executed and delivered by plaintiff to defendant for the time intervening between the dates of said notes and their maturity respectively?

Answer. No.

Question 4. When plaintiff secured the loan of money from defendant and executed his notes therefor respectively, did plaintiff and defendant agree upon the amount and rate of interest that plaintiff was to pay for the respective sums for the use thereof for the times intervening between the several dates of said notes and their maturity? If you answer yes, then answer what rate of interest was so agreed upon.

Answer. Yes; 12 % per annum.

Question 5. When plaintiff secured the several loans of money from defendant, as alleged in his petition, did he only receive the said several sums in cash, as alleged by him, and were the several sums respectively added to said amount so received, as alleged in his said petition, as interest for the loan and use of said respective sums, *are* were such sums so added for some other purpose or consideration?

Answer. Yes; for interest.

Question 6. If, in answer to the foregoing question 5, you say that said several sums respectively were added to the amounts respectively received by plaintiff, as alleged in his petition, as interest for the loan and use of said respective sums, then were such sums so added by the agreement of plaintiff and def't at the time said sums of money *was* so received and plaintiff's said note executed and delivered therefor?

Answer. Yes.

Question 7. If, in answer to question 6, you say that said sums were added to the said amounts as interest for the loan and
19 use of said respective sums borrowed by plaintiff from defendant by agreement of plaintiff and defendant, then was each sum so added to the respective amounts borrowed by plaintiff a greater rate of interest than 10 % per annum on the amount so charged for the time charged?

Answer. Yes.

Question 8. If, in answer to question 7, you say that said sums were added to the said amount as interest for the loan and use of said respective sums borrowed, and in answer to question 7 you say that each sum so added to the respective amounts borrowed by plaintiff is a greater rate of interest than 10 % *per cent.* per annum on the amount so charged for the time charged, then *was* said sums so charged by defendant for the use of said respective amounts loaned plaintiff, knowing at the time that they were a greater rate of interest on the respective amounts than 10 % *per cent.* per annum?

Answer. Yes.

Question 9. Was there any other consideration embraced in the notes given by plaintiff to defendant; and, if so, what was said consideration? Did any amount of said notes embrace charges for

mortgages and recording mortgages, or either; if so, how much and in which of said notes?

—. No.

Question 10. What is the aggregate amount of interest paid by plaintiff to defendant on the several notes and loans set out in plaintiff's petition?

Answer. $233.05.

Question 11. What amount is due defendant by plaintiff on the note heretofore executed and delivered by him to W. B. Womack and Son, and which has been read in evidence before you?

Answer. $178.38.

B. T. CAMERON, *Foreman.*

Filed October the 27th, 1898.

J. W. PHILLIPS,
District Clerk.

Judgment of the Court, October 28th, 1898.

GEORGE W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

Court in session this October 27th, 1898, when the above entitled and numbered cause was called for trial in its regular order. Whereupon came parties, both plaintiff and defendant, and announced ready for trial, and a jury having been demanded by the defendant, and the jury having been empaneled and sworn to try said cause, and after hearing the pleadings read and the evidence offered by each party and the argument of counsel, and the court read its charge to the jury, which cause was submitted on special issues, the jury retired to consider of their verdict and afterwards returned into open court with the following verdict, to wit:

Question 1. Did the plaintiff borrow and receive from the defendant the several sums of money, as alleged and specified in his petition, and executed and delivered to defendant his promissory note for such sums respectively, as in said petition alleged?

Answer. Yes.

Question 2. Did plaintiff sign said note as the principal obligor therein and the other parties respectively as sureties?

Answer. Yes.

Question 3. Was there any rate of interest specified as such in the said several notes executed and delivered by pl't'ff to defendant for the time intervening between the dates of said notes and their maturity respectively?

Answer. No.

Question 4. When plaintiff secured the loans of money from def't and executed his note therefor respectively, did plaintiff and defendant agree upon the amount and rate of interest that plaintiff was to pay — the respective sums for the use thereof for the times intervening between the several dates of said notes and their maturity?

If you answer yes, then answer what rate of interest was so agreed upon.

Answer. Yes; 12 % per annum.

Question 5. When plaintiff secured the several loans of money from defendant, as alleged in his petition, did he only receive the said several sums in cash, as alleged by him, and were the several sums respectively added to said amount so received, as alleged in his said petition, as interest for the loan and use of said respective sums, or were such sums so added for some other purpose or consideration?

Answer. Yes; for interest.

Question 6. If, in answer to the foregoing question 5, you say that said several sums respectively were added to the amounts respectively secured by plaintiff, as alleged in his petition, as interest for the loans and use of said respective sums, then were such sums so added by the agreement of plaintiff and defendant at the
21 time said sums of money *was* so received and plaintiff's said notes executed and delivered therefor?

Answer. Yes.

Question 7. If, in answer to question 6, you say that said sums were added to the said amounts as interest for the loan and use of said respective sums borrowed by plaintiff from defendant by agreement of plaintiff and defendant, then was each sum so added to the respective amounts borrowed by plaintiff a greater rate of interest than 10 % per annum or the amount so charged for the time charged?

Answer. Yes.

Question 8. If, in answer to question 7, you say that said sum- were added to the amounts as interest for the loan and use of said respective sum- borrowed, and in answer to question 7 you say that each sum so added to the respective amounts borrowed by plaintiff is a greater rate of interest than 10% per annum on the amounts so charged for the time charged, then *was* said sums so charged by defendant for the use of the said respective amounts loaned plaintiff, knowing at the time that they were of greater rate of interest on the respective amounts than 10 % per annum?

Answer. Yes.

Question 9. Was there any other consideration embraced in the note given by plaintiff to defendant; and, if so, what was said consideration? Did any amount of said notes embrace charges for mortgages and recording mortgages, or either; if so, how much, and in which of said notes?

—. No.

Question 10. What is the aggregate amount of interest paid by plaintiff to defendant on the several notes and loans set out in plaintiff's petition?

Answer. $233.05.

Question 11. What amount is due defendant by plaintiff on the note heretofore executed and delivered by him to W. B. Womack & Son, which has been read in evidence before you?

Answer. $178.38.

B. T. CAMERON, *Foreman.*

It is therefore ordered, adjudged, and considered by the court that in accordance with the findings and the verdict of the jury that the plaintiff, George W. Ragland, do have and recover of and from the defendant, The National Bank of Daingerfield, the sum of two hundred and fifty-two and $\frac{5}{100}$ dollars, and 6 % interest per annum from the date hereof, and all cost of suit in this behalf expended; for which let execution issue.

22 *Motion for a New Trial.*

Filed Oct. 29th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court, Morris County, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } #1107.

Now comes the defendant in the above cause, by and through its attorneys, and moves the court to set aside the judgment rendered in said cause at this term of the court and to grant it a new trial for reasons as follows, to wit: 1st. The court erred in sustaining the plaintiff's challenge of the jurors O. M. Walls and J. H. Mars for cause, as set out in defendant's bill of exception No. 1. 2nd. The court erred in permitting the plaintiff, as a witness in his own behalf, to testify before the jury as to the contract fixing the rate of interest on the several sums mentioned in plaintiff's petition, all as shown in bill of exception No. 2. 3rd. The court erred in permitting the plaintiff, as a witness in his own behalf, to testify before the jury that the rate of interest charged and collected from him by the defendant was more than 10 % per annum, all as shown by bill of exception No. 3. 4th. The court erred in permitting the plaintiff Ragland, as a witness in his own behalf, to state that the amount of money paid to the defendant as interest was more than 12 % per annum when calculated on the amount of money actually borrowed by him from the defendant and the time which said money was borrowed, because that was not the proper mode to compute interest on said transactions, as each and all of said transactions and loans were discounts of plaintiff's note, and defendant was entitled to deduct from the face of each note 10 % thereof per annum as interest.

5th. The court erred in permitting the jury, after it had retired to consider its verdict, to have the use of the statement which had been prepared and made by plaintiff, all as shown in bill of exception 5.

6th. The court erred in rendering judgment for plaintiff for $166.10, because it appears from the findings of the jury in this case and from the undisputed evidence that a large number of the transactions had by plaintiff with the defendant, in which the plaintiff obtained loans of money from the defendant, were had
23 more than two years next preceding the filing of plaintiff's suit, and that if plaintiff had any cause of action against the

defendant for reserving or collecting unlawful interest, that said cause of action accrued when said transactions were had, and were barred by the two years' statute of limitation when plaintiff's suit was filed.

HENDERSON & ROBINSON &
J. M. MOORE,
Atty's for Defendant.

Filed October the 29th, 1898.

J. W. PHILLIPS,
District Clerk.

Judgment on the Motion for New Trial.

GEORGE W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } #1107.

OCTOBER 29TH, 1898.

This day came on to be heard the motion of the defendant herein for a new trial, and the court, after hearing the motion read and the argument of counsel, is of the opinion that the law is against said motion. It is therefore ordered and adjudged by the court that said motion be, and the same is hereby, overruled; to which ruling of the court the defendant excepts and in open court give- notice of appeal to the court of civil appeals, 5th supreme judicial district of Texas, and ten days is allowed after adjournment of court in which to prepare and file statement of facts herein.

Bill of Exception No. 1.

Filed Oct. 29th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } #1107.

Be it remembered that upon the trial of this cause and during the organization of the jury therein it was made to appear to the court that two of the jurors, to wit, J. H. Mars and O. M.
24 Walls, who were on the regular venire for the week of this term of the court, were related to stockholders in defendant bank within the third degree by consanguinity—that is, the said Mars is the father and the said O. M. Walls the half brother of stockholder- in said bank, and upon plaintiff challenging said jurors for cause the court sustained said challenge and ordered said jurors' names stricken from the list of jurors from which the parties in this cause were to select a jury; to which ruling of the court the defendant excepted; that thereupon the defendant struck from the list of names left of the regular venire, as shown by the said list

and exercised four peremptory challenges, and after said challenges were made by the plaintiff there remained only seven jurors to try said cause. Thereupon the court ordered the sheriff to summons eight talismen, and the names of the said eight talismen having been listed and handed to the parties, the defendant thereupon exercised the right of two peremptory challenges and came before the court and stated that it had exhausted its peremptory challenges, and stated that objectionable jurors would have to be taken by the defendant, and it thereupon offered to accept, and requested the court to permit it to accept, and take the said jurors, J. H. Mars and O. M. Walls, in lieu of said objectionable jurors, which the court refused to permit the defendant to do; to which action and ruling of the court the defendant again excepted; and after parties had challenged from said eight jurors there were only four of said jurors left, which, added to the seven selected from the regular venire, made a eleven jurors selected in said case; that thereupon the court ordered the sheriff to select other talismen to fill out the jury, and thereupon the defendant again stated to the court that said last jurors summoned were objectionable and offered to take said Mars or Walls in lieu of said jurors, which it was refused and denied the right to do; to which ruling and action of the court the defendant again excepted and here tend-s its bill and prays that the court approves same and order it filed as a part of the record in this case.

It appeared to the court that the juror O. M. Walls was a half brother of W. B. Womack; that W. B. Womack was a large stockholder of the defendant bank; that the juror J. H. Mars was the father of T. C. Mars; that T. C. Mars was a stockholder of the defendant bank. In the opinion of the court these jurors were indirectly interested in the result of this suit by reason of their close relationship to the stockholders named; that they were not
25 in contemplation of law fair, impartial, and unbiased jurors, and parties demanded that the challenge of the plaintiff should be sustained. With this explanation, the above bill is approved and ordered filed.

J. M. TALBOT, *Judge.*

Filed October 29th, 1898.

J. W. PHILLIPS,
District Clerk.

Bill of Exception No. 2.

Filed Oct. 29th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Texas, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

Be it remembered that upon the trial of this cause that the plaintiff, G. W. Ragland, was permitted to state as a witness in his testimony to the jury that he had an understanding and contract with the defendant under and by virtue of which he obtained the several loans set out in his petition, and under said contract the defendant bank was to charge him 12 % interest per annum; to which statement and evidence the defendant objected on the ground that said evidence was immaterial and incompetent because the plaintiff's cause of action was to recover the penalty for receiving and collecting unlawful interest, and that the defendant could only be held for what it actually received and collected, and not what it contracted to collect; *to* which objection the court overruled and permitted said statement to go before the jury; to which ruling of the court the defendant excepted and here tenders its bill and prays that it be allowed and ordered filed as a part of the record in this cause. The plaintiff's right to recover was based upon the alleged fact that defendant had charged plaintiff for the several loans set out in his petition a greater rate of interest than 10 % per annum. There was no rate specified in the note for the time intervening between the date of the notes respect*fully* and there maturity, and in view of the evidence and proof before the court, — held this question and answer here complained of were competent and material.

With this explanation, this bill is approved and ordered
26 filed.

J. M. TALBOT, *Judge.*

Filed October the 29th, 1898.

J. W. PHILLIPS,
District Clerk,
By H. B. PREWITT, *Deputy.*

Bill of Exception No. 3.

Filed Oct. 29th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } 1107.

Be it remembered that upon the trial of this cause that the plaintiff, G. W. Ragland, was asked by his counsel what rate of interest

the defendant charged him and collected from him on the several sums of money set out in his, the said Ragland's, petition, and whether or not the rate charged and collected from him on said several sums of money was more than 10% per annum; to which questions the defendant objected on the grounds that it was a legal conclusion which said question would elicit from the witness, and would not establish any fact, but would be merely the legal opinion and conclusion of the witness; which objection of the defendant were overruled, and permitted said witness to answer the rate charged him by defendant was 12% per annum on said several sums of money; to which ruling and action of the court the defendant excepted and here tenders its bill and prays the court to approve same and order it filed as part of the record in this cause.

The above action was had late in the afternoon of the first day of the trial. The next morning, while said witness was still on the stand, he testified from a tabulated statement of all the transactions involved in this suit, stating without objection the several amounts of the notes given for borrowed money, the amount added as interest, the rate it amounted to, and that defendant charged him 12% on loans. With this exception, the above bill is approved and ordered filed.

J. M. TALBOT, *Judge.*

Filed October 28th, 1898.

J. W. PHILLIPS,
District Clerk.

27 *Bill of Exception No.* 4.

Filed Oct. 29th, 1898. J. W. Phillips, Dist. Clerk.

In the District Court of Morris County, Texas, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD. } #1107.

Be it remembered that upon the trial of this cause that the plaintiff, G. W. Ragland, as a witness in his own behalf, was permitted to state, over the objection of the defendant, that the rate of interest paid by him to the bank, defendant, was more than 12 % per annum when the amount paid by him in the aggregate was calculated upon and based upon the various amounts actually received by him and from the time they were actually received by him and until due; to which statement the defendant objected, on the ground that it being shown that each and all the transactions it had with the plaintiff were discounts of his paper within the meaning of the law, and that the defendant had the right to retain out of the face of each note 10 % from the aggregate of each of said notes per annum as interest, and that said statement of plaintiff was not the proper measure of damages and would be misleading to the jury; which objection the court overruled; to which ruling the defendant ex-

cepted and here tenders its bill and prays that it be allowed and ordered filed as a part of the record in this cause.

The proof showed that none of the interest or money charged for the use of said money borrowed was paid at the time the money was borrowed from defendant and the notes given, but was added to the notes given and actually paid as other money due in said notes. With this explanation, the above bill is approved and ordered filed.

J. M. TALBOT, *Judge.*

Filed October 29th, 1898.

J. W. PHILLIPS,
District Clerk.

Bill of Exception No. 5.

Filed Oct. 29th, 1898. J. W. Phillips, District Clerk.

28 In the District Court of Morris County, Texas, Fall Term, A. D. 1898.

G. W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

Be it remembered that upon the trial of the above styled and numbered cause, and after the jury had retired to consider their verdict they sent into court through the sheriff and requested the court to permit them to have the following tabulated statements, which had been prepared and made by the plaintiff, showing the various sums of money which had been loaned to him by the defendant and the dates of each loan when the same became due, the rate of interest paid for each loan, the amount of interest in the aggregate paid on all of said loans by plaintiff to the defendant, said statement being as follows, to wit, as shown by Exhibit "A," hereto attached and made a part of this bill; that upon the sheriff delivering the message of the jury to the court the court asked the parties, plaintiff and defendant, if there was any objection to the juries having the use of said statement; to which *injury* both parties answered that there was no objections and agreed that said statement should be delivered to the jury for its use; but immediately after said statement was delivered to the jury, and when they had had it in their possession not more than a minute or two, the defendant, through its counsel, stated to the court that it had reconsidered and wanted to withdraw its consent for the jury to have possession and use of said statement and to object to them having said statement, which objection the court overruled; to which ruling of the court the defendant excepted and here tenders its bill of exception and prays that it be allowed and ordered filed as a part of the record of this cause.

The defendant, by its counsel, in open court, deliberately agreed that the statement might be delivered to the jury for its use, and it was not permitted to go to them until such agreement and con-

sent was had, and after it was so delivered the court did not feel called upon or warranted in withdrawing it. With this explanation, the above bill is approved and ordered filed.

J. M. TALBOT, *Judge.*

Filed October 29th, 1898.

J. W. PHILLIPS,
District Clerk.

29 *Assignments of Error.*

Filed Nov. 17th, 1898. J. W. Phillips, District Clerk.

In the Court of Civil Appeals, 5th Supreme Judicial District.

THE NATIONAL BANK OF DAINGERFIELD, Appellant,
vs.
G. W. RAGLAND, Appellee. } # 1107.

And now comes the appellant, The National Bank of Daingerfield, and assigns the following errors committed by the district court upon the trial of this cause, and because of said errors the appellant bank prays the honorable court of civil appeals to reverse and remand said cause, to wit:

1st. The court erred in sustaining the challenges of the appellee for cause to the jurors O. M. Walls and J. H. Mars, thereby forcing appellant to accept objectionable jurors to try the cause, all as is shown by bill of exception No. 1.

2nd. The court erred in permitting the appellee, as a witness in his own behalf, to state that he made and had a contract with appellant, by and under which he obtained the several loans set out in his petition, and under which contract he was to pay appellant interest at the rate of 12 % per annum on the said several loans, all as is shown by bill of exception No. 2.

3rd. The court erred in permitting the appellee, as a witness in his own behalf, to state that the amount charged and collected of him by appellant as interest for the several loans set out in his petition was more than 10 % per annum, all as is shown by bill of exception No. 3.

4th. The court erred in permitting the appellee, as a witness in his own behalf, to state that the rate of interest paid by him to defendant bank (appellant) was more that 12 % per annum when the amount paid by him in the aggregate was calculated upon and based upon the various amounts actually received by him and from the time they were actually received by him and until due, all as shown by bill of exception No. 4.

5th. The court erred in permitting the jury after they had retired to have the use and possession of the statement prepared by appellee, showing the various sums of money which had been loaned to him by appellant, with dates of each loan, when became due, rate of interest paid for each loan, and the amount of interest in the aggregate paid by appellee to appellant on all of said loans, all as is shown by bill of exception No. 5.

30 6th. The court erred in rendering judgment for appellee for double the amount of interest, as found by the jury as having been paid by appellee to appellant (less amount of note plead by appellant as an offset), because it appears from appellee's petition, the undisputed evidence, and finding of the jury that a large proportion of the transaction- had by appellee with appellant, in which a large part of said interest accrued and was paid, occurred more than two years next preceding the filing of pl't'ff's suit and was barred and prescribed by the two years' statute of limitation when sued on.

7th. The court erred in not setting aside the findings of the jury and awarding appellant a new trial, and the court erred in rendering judgment for appellee on the findings of the jury, because there was no evidence to show that appellant knowingly and intentionally collected and received from appellee unlawful interest, and especially on the several large loans, to wit, on the loan of $390.00, made Jan'y 1st, 1895, and on the loan of $722.57, made Jan'y 2nd, 1896, and on the loan made Jan'y 1st, 1897, for $486.56, because at the time *of* each of said loans were made appellant took mortgage- from appellee to secure said loans and paid recording fees for recording said mortgages, and had said mortgages examined and approved by its cashier as to their legality, &c.

HENDERSON & ROBISON &
J. M. MOORE,
Att'ys for Appellant.

Filed November the 17th, 1898.

J. W. PHILLIPS,
District Clerk.

Appeal Bond.

Filed and Approved Nov. 10th, 1898. J. W. Phillips, District Clerk.

GEORGE W. RAGLAND
vs.
THE NATIONAL BANK OF DAINGERFIELD.

Know all men by these presents that whereas on the 27th day of October, A. D. 1898, and at a regular term of the district court begun and holden in and for the county of Morris, and upon the trial of the above styled and numbered cause, then and there pending in said court, that the plaintiff, G. W. Ragland, did
31 recover of the defendant, The National Bank of Daingerfield, a judgment for the sum of ($252.05) two hundred and fifty-two and $\frac{5}{100}$ dollars, with 6 % interest thereon from the date of said judgment, and all cost in said cause expended, from which judgment the defendant, The National Bank of Daingerfield, has taken an appeal to the court of civil appeals of the 5th supreme judicial district of Texas: Now, therefore, we, The National Bank of Daingerfield, as principal, and J. L. Williams and J. H. Smith, as sureties, acknowledge ourselves to owe and be indebted unto the plaintiff, G. W. Ragland, in the sum of ($700.00) seven hundred dollars,

conditioned that the National Bank of Daingerfield shall prosecute its appeal with effect, and in case the judgment of the supreme court or the court of civil appeals shall be against it, it shall perform its judgment, sentence, or decree and pay all such damages as said court may award against it.

Witness our hands this — day of November, 1898.

THE NATIONAL BANK OF DAINGERFIELD, *Principal*,
Per J. M. MOORE, *President*.
J. L. WILLIAMS, *Surety*.
J. H. SMITH, *Surety*.

I fix the probable cost to accrue in this court and the court of civil appeals and supreme court at $85.00, eighty-five dollars.

J. W. PHILLIPS,
District Clerk.

Approved and filed this November the 10th, 1898.

J. W. PHILLIPS,
District Clerk.

Bill of Cost.

To docketing cause		$ .20
To appearance		.30
To filing 10 papers		1.50
To citation and copy		1.50
To recording sheriff's return on citation		.75
To acknowledgement to contract		.50
To docketing motion		.15
To order on motion		.50
To empaneling jury		.35
32 To recording verdict of jury		.35
To judgment		1.50
To approving appeal bond		1.50
To swearing four witnesses		.40
To making transcript to court of appeals		27.75
To certificate to transcript		.75
Total clerk's cost		$38.00
To serving citation	1.50	
To jury fee	.50	
		2.00
Total amount of cost		$40.00

THE STATE OF TEXAS, }
County of Morris. }

I, J. W. Phillips, clerk of the district court in and for Morris county, Texas, do hereby certify that the above and foregoing pages contain a true and correct copy of all the proceedings had in the above styled and numbered cause, which is now on file in this office.

Given under my hand and seal of office this Dec. the 29th, A. D. 1898.

J. W. PHILLIPS,

[SEAL.] *Clerk District Court, Morris County, Texas.*

Endorsed: No. 1808. The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee. From the dist. court of Morris county. Applied for by J. M. Moore, attorney for appellant, on the 4th day of Jan'y, 1899, and delivered to J. M. Moore on the — day of Jan'y, 1899. J. W. Phillips, clerk dist. court, Morris Co. Filed in court of civil appeals Feb. 6, 1899. Geo. W. Blair, clerk 5th district. Filed in court of civil appeals at San Antonio, Texas, Mar. 22, 1899. H. E. Hildebrand, clerk.

33 *Order Transferring Cause to Court of Civil Appeals, 4th District.*

Be it remembered that at a regular term of the court of civil appeals in and for the fifth supreme judicial district of Texas, begun and holden at Dallas on the 3rd day of October, A. D. 1898 (present, Hon. N. W. Finley, chief justice, and Anson Rainey and John Bookhout, associate justices), on the 17th day of March, 1899, a day of said term, the following order was made in cause No. 2680:

NAT'L BANK OF DAINGERFIELD *vs.* G. W. RAGLAND. } No. 2680. From Morris County.

By direction of the honorable supreme court of the State of Texas, it is ordered that this cause be transferred to the court of civil appeals for the 4th supreme judicial district, at San Antonio, Texas, and that the clerk of this court certify all orders made and costs accrued in this cause in this court, and transmit all the papers in this cause to the clerk of said 4th district.

I, Geo. W. Blair, clerk of the court of civil appeals of the fifth supreme judicial district of Texas, do hereby certify that the foregoing is a true copy of the orders made by this court in the above entitled and numbered cause.

Given under my hand and seal of office, at Dallas, Texas, this 17th day of March, A. D. 1899.

GEO. W. BLAIR, *Clerk.*

Endorsed: No. 2680. Certified copy of orders in court civil appeals, at Dallas. Nat'l Bank of Daingerfield *vs.* G. W. Ragland. Filed in the court of civil appeals, at San Antonio, Texas, Mar. 22, 1899. H. E. Hildebrand, clerk.

34 *Opinion.*

THE NATIONAL BANK OF DA-NGERFIELD, Appellant, *vs.* G. W. RAGLAND, Appellee. } No. 1808. Appeal from Morris County.

Appellee instituted this suit to recover of appellant the penalty provided by statute, amounting to $557.34, on account of usurious interest demanded and received by it from appellee. The cause was tried by jury, being submitted on special issues, and on the answers judgment was rendered for $252.05.

Two jurors who were related in the third degree by consanguinity to stockholders in the bank were challenged for cause by appellee, and the challenges sustained by the court, and appellant complains of that action. The statute gives wide discretion to the trial judge in connection with challenges for cause, not confining him to any specified cause, but authorizes challenges for any cause "which, in the opinion of the court, renders him an unfit person to sit on the jury," and a judgment will not be reversed without it should appear that the discretion has been abused and the party complaining injured thereby. Rev. Stats., 3207; Couts *vs.* Neer, 70 Tex., 468. O. M. Walls, one of the rejected jurors, was a half brother to W. B. Womack, a large stockholder in the bank, and the other rejected juror was the father of another of the stockholders. We think the court did not abuse the discretion entrusted to it by the statute, and no attempt is made to show that appellant was deprived of a fair trial by the rejection of the jurors.

There is no merit in the second assignment of error, which is to the effect that appellant should not have been allowed to state that he agreed to pay 12 per cent. interest on the note. The first note was given for $380.00, payable in twelve months, when appellant obtained only $348.00, and appellant was properly allowed to state that $42.00, which was more than 12 per cent., was added in the note as interest for the twelve months. Appellee swore that he had paid all the different notes given, which included usurious interest, as did the one above mentioned, and there can be no force in the contention that he should not have been allowed to testify
35 as to what he contracted to pay, but as to what he paid. An explanation of the contract was necessary to show what usurious interest he had paid.

A statement of the various sums of money which had been loaned by appellant to appellee, with the date of each loan, when it became due, rate of interest, &c., was prepared and testified to by appellee, and after the jury had retired they requested the court to allow them to have the statement. With the consent of the attorneys of both parties, the statement was delivered to the jury. Afterwards appellant sought to have the statement withdrawn, but the court would not permit it. Appellant, perhaps, had the right to have the statement excluded from the jury, but having consented to let the jury

have it, it cannot complain that the court would not permit it to have it recalled.

The facts do not bear out the assertion that the usurious interest or any part thereof was paid more than two years before the suit was instituted. The statute did not begin to run *to run* until the usurious interest was paid. Rev. Stats., 3106; Stout *v.* Bank, 69 Tex., 385.

The other assignments are not well taken.

The judgment is affirmed.

(Signed) W. S. FLY,
Associate Justice.

Endorsed: No. 1808. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. The Nat'l Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee. Opinion by W. S. Fly, associate justice. Filed in the court of civil appeals, at San Antonio, Texas, May 17, 1899. H. E. Hildebrand, clerk. Filed in supreme court Aug. 12, 1899. Chas. S. Morse, clerk.

Judgment of the Court of Civil Appeals.

THE NATIONAL BANK OF DAINGERFIELD, Appellant,
vs.
G. W. RAGLAND, Appellee. } No. 1808.

Appeal from district court of Morris county.

WEDNESDAY, *May 17th, A. D.* 1899.

36 This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was no error in the judgment, it is therefore considered, adjudged, and ordered that the judgment of the court below be in all things affirmed; that the appellee, G. W. Ragland, do have and recover of and from the appellant, The National Bank of Daingerfield, and its sureties, J. L. Williams and J. H. Smith, the amount adjudged by the court below and all costs in this behalf incurred, and this decision be certified below for observance.

Motion for Rehearing.

In the Court Civil Appeals, 4th District.

THE NATIONAL BANK OF DAINGERFIELD, Appellant,
vs.
G. W. RAGLAND, Appellee.

And now comes the appellant, The National Bank of Daingerfield, by its attorney, and moves the court to set aside its judgment hereinbefore rendered affirming this cause and to grant it a rehearing, because the court committed the following errors in its conclusions of law, to wit:

1st. The court erred in holding that the appellee's cause of action

and no part thereof was barred by limitation when sued on, because the undisputed facts show, 1st, that appellant is a national bank created and organized under an act of Congress; 2nd, that each and all of the transactions by and between appellant and appellee, whereby appellee obtained money from appellant, were transactions in which appellant "discounted" the paper of appellee and collected its interest at the time by reserving it out of the appellee's note, and that the majority of such transactions occurred more than two years previous to the filing of plaintiff's suit.

3rd. The undisputed evidence shows that a majority of the "usurious transactions" had by appellee with appellant occurred more than two years prior to the filing of appellee's suit.

4th. The court erred in applying to this case the State
37 statute which fixes the period of limitation two years from the date of the "payment" of the unlawful interest, because appellant, being a national bank, is of right entitled to have its rights and remedies from the act of Congress, which fixes the limitation at two years from the date of the "usurious transaction." Revised Statutes U. S., section 5198; Bobo *v.* People's National Bank of Shelbyville, 21st S. W., page 888.

Respectfully submitted.

J. M. MOORE,
Att'y for Appellant, The Nat'l Bank of Daingerfield.

Sheppard & Jones, Texarkana, Texas, are attorneys of record for appellee, G. W. Ragland.

Endorsed: Mo. 2025, with app. # 2373. The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee. Motion for a rehearing. Filed in the court of civil appeals, at San Antonio, Texas, May 29, 1899. H. E. Hildebrand, clerk. Filed in supreme court Aug. 12, 1899. Chas. S. Morse, clerk.

Opinion of Court on Motion for Rehearing.

National Bank of Daingerfield, Appellant, *vs.* G. W. Ragland, Appellee.	No. 1808. Appeal from Morris County.

On motion for rehearing.

It is urged by appellant that it, being a national bank, is entitled to have the laws of the United States fixing limitations of suits for usurious interest applied to it, and that limitation by those laws begins at the date of the "usurious transactions," and not, as provided by the laws of Texas, from the day of payment of the usurious interest. It may be admitted that the proposition is a correct one and still there would be no ground presented for a rehearing, for it is well established that under section 5198, Revised Statutes of the United States, invoked by appellant, that the right of action accrues

when the usury is paid, and that limitation begins to run
38 from that date. Webb on Usury, § 525, and authorities cited. The motion for rehearing is overruled.

(Signed) W. S. FLY,
Associate Justice.

Endorsed: No. 1808. In court of civil appeals, fourth supreme judicial district of Texas, San Antonio. Nat'l Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee. Opinion on rehearing by W. S. Fly, associate justice. Filed in the court of civil appeals, at San Antonio, Texas, June 14, 1899. H. E. Hildebrand, clerk. Filed in supreme court Aug. 12, 1899. Chas. S. Morse, clerk.

Order of Court on Motion for Rehearing.

THE NAT'L BANK OF DAINGERFIELD, Appellant, *vs.* G. W. RAGLAND, Appellee. } No. 1808. Appeal from Morris County.

WEDNESDAY, *June* 14, *A. D.* 1899.

The motion of appellant for a rehearing, filed May 29, 1899, coming on to be heard and the court having duly considered the same, it is ordered that said motion be, and it is hereby, overruled, and it is further ordered that appellant, The National Bank of Daingerfield, and its sureties, J. L. Williams and J. H. Smith, pay all costs of this motion.

Judgment of Supreme Court.

The Supreme Court of Texas, 4th District.

NAT. BANK OF DAINGERFIELD *vs.* G. W. RAGLAND.

OCT. 12, 1899.

This day came on to be heard the application of The National Bank of Daingerfield for a writ of error to the court of civil
39 appeals for the fourth supreme judicial district, and the same having been duly considered, it is ordered that said application be dismissed for want of jurisdiction; that the applicant, The National Bank of Daingerfield, and its sureties, J. L. Williams and J. H. Smith, pay all costs incurred on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court in the above styled and numbered application.

Witness my hand and the seal of said court this the 12th day of October, 1899.

[SEAL.] CHAS. S. MORSE, *Clerk*,
By —— ——, *Deputy.*

Endorsed: No. 2373. Nat'l Bank of Daingerfield *vs.* G. W. Ragland. Copy of judgment in supreme court. Application for writ of error dismissed for want of jurisdiction. Filed in the court of civil appeals, at San Antonio, Texas, Oct. 14, 1899. H. E. Hildebrand, clerk.

Petition for Writ of Error.

In the Supreme Court of the United States,

THE NATIONAL BANK OF DAINGERFIELD, Plaintiff in Error,
vs.
G. W. RAGLAND, Defendant in Error.

To the honorable Supreme Court of the United States:

Now comes the National Bank of Dangerfield, which is a national bank organized under the laws of the United States, and shows to the court:

1st. That G. W. Ragland filed suit in the district court of Morris county, Texas, against The National Bank of Daingerfield, plaintiff in error, for the sum of $557.34, being the penalty provided by U. S. Revised Statutes, art. 5198, for collecting usurious interest on money borrowed by said Ragland from this bank, and sought to recover double the amount of interest he paid by virtue of the second clause of said art. 5198.

2nd. The defendant, this bank, specially set up in its answer and claimed and relied on a privilege and immunity under and by virtue of a statute of the United States—that is, said bank set up and claimed and relied on the plea that plaintiff's suit for said penalty was not filed and commenced within two years from the time the usurious transaction occurred.

3rd. The facts showed that the usurious interest was reserved when the money was borrowed by Ragland, which was more than two years before the suit was commenced, but said interest was paid less than two years before the action was commenced.

4th. The district court held that the limitation did not begin to run until the usurious interest was paid, and that the cause of action was not barred, and gave judgment for Ragland for the penalty of double the usurious interest paid.

5th. The bank appealed to the court of civil appeals of the State of Texas for the 5th supreme judicial district, at Dallas, Texas, and specially assigned as error the court's action in holding the cause of action not to be barred.

6th. The cause was regularly and legally transferred to the court of civil appeals for the 4th supreme judicial district, holding session at San Antonio, Texas.

7th. On May 17th, 1899, the said court of civil appeals, at San Antonio, affirmed the judgment, and held that limitation did not begin to run until the usurious interest was paid, and on June 14th, 1899, overruled the bank's motion for a rehearing, thereby rendering a decision against the privilege and immunity claimed by said

bank, that the suit was barred by virtue of the proviso in U. S. Rev. Statutes, art. 5198.

8th. That the said court of civil appeals is the highest court of the State to which the cause can be taken and in which a decision in the cause can be had, the supreme court of Texas having on the — day of October, A. D. 1899, dismissed the application of your petitioner for writ of error because the judgment of the court of civil appeals was final.

9th. Wherefore the National Bank of Daingerfield prays for a writ of error to remove said cause into the Supreme Court of the United States for revision and correction, and it says the court
41 has committed errors in the trial and decision of said cause as follows:

Assignment of Error.

1st. The court of civil appeals erred in holding that the limitation on the suit for the penalty for charging and collecting usurious interest did not begin to run until said usurious interest was paid, and that the right to recover the penalty was not barred.

2nd. The court of civil appeals erred in not holding that limitation on the right to recover the penalty began when the usurious transaction occurred, which was when the money was borrowed and when the interest was deducted.

Wherefore the National Bank of Daingerfield prays for a writ of error, and presents herewith a good and sufficient bond, and prays for citation in error.

It prays that the judgment be reversed.

F. H. PRENDERGAST &
J. M. MOORE,
Att'ys for Petitioner, The National Bank of Daingerfield.

The writ of error and supersedeas above asked for *is* allowed, and the security or bond offered herewith is approved this the 29th day of December, 1899.

JOHN H. JAMES,
Chief Justice Court of Civil Appeals for the 4th Supreme Judicial District of Texas.

Endorsed: The National Bank of Daingerfield *vs.* G. W. Ragland. Petition for writ of error. Filed in the court of civil appeals, at San Antonio, Texas, Dec. 29, 1899. H. E. Hildebrand, clerk.

Bond for Writ of Error.

Know all men by these presents that we, The National Bank of Daingerfield, as principal, and —— ——, as sureties, are held and firmly bound unto G. W. Ragland in the full and just sum of seven hundred and fifty dollars, to be paid to the said G. W. Rag-
42 land or his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we

bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the court of civil appeals of the 4th supreme judicial district of Texas, in a suit depending in said court between The National Bank of Daingerfield, appellant, and G. W. Ragland, appellee, a judgment was rendered against the said The National Bank of Daingerfield, and the said The National Bank of Daingerfield having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said G. W. Ragland, citing and admonishing him to be and appear at a Supreme Court of the United States. at Washington, within — days from the date thereof:

Now, the condition of the above obligation is such that if the said The National Bank of Daingerfield shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NATIONAL BANK OF DAINGERFIELD.
J. G. BRADFIELD, *President.*
R. N. TRAYLOR, *Surety.*
J. H. SMITH, *Surety.*

Sealed and delivered in presence of—
A. C. RICHARDSON.
J. C. JENKINS.

Approved by—
J. H. JAMES,
Chief Justice Court Civil Appeals,
4th Supreme Judicial Dist. of Texas.

STATE OF TEXAS, }
County of Morris. }

I, J. W. Phillips, clerk of the county court in and for the county and State aforesaid, do hereby certify that R. N. Traylor and J. H. Smith, whose names appears signed to the annexed bond, are good and ample security for the amount therein stipulated; that they have property in said county subject to execution to a larger amount, and that if said bond was offered to me for approval
43 the same would be accepted and approved.

In testimony whereof I hereunto sign my name officially and affix the seal of the county court of Morris county, at office, in the town of Daingerfield, this 16th day of December, A. D. 1899.

J. W. PHILLIPS,
Clerk County Court, Morris Co., Texas,
By —— ——, *Deputy.*

Endorsed: Filed in the court of civil appeals, at San Antonio, Texas, Dec. 29, 1899. H. E. Hildebrand, clerk.

Citation in Error.

UNITED STATES OF AMERICA, *ss:*

To G. W. Ragland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals for the fourth supreme judicial district of Texas, wherein The National Bank of Daingerfield is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN H. JAMES,
Chief Justice Court Civil Appeals,
4th Supreme Judicial District of Texas.

Attest: H. E. HILDEBRAND,
Clerk Court Civil Appeals,
4th Supreme Judicial District of Texas.

UNITED STATES OF AMERICA, }
Western District of Texas. }

44 I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, hereby certify that the above is a true and correct copy of the citation in error issued out of this court in the case of The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee, pending in the court of civil appeals for the fourth supreme judicial district of Texas.

Witness my hand and the seal of the circuit court of the United States, at office in the city of San Antonio, Texas, this the 29th day of December, A. D. 1899.

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
[SEAL.] By A. GROSENBACHER, *Deputy.*

Endorsed: I hereby waive service of the within citation and take notice of the same this January the 4th, A. D. 1900. J. F. Jones, attorney for G. W. Ragland. Filed in the court of civil appeals, at San Antonio, Texas, Jan. 9, 1900. H. E. Hildebrand, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the court of civil appeals for the fourth supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals for the fourth supreme judicial district of Texas, before you or some of you, between The National Bank of Daingerfield, appellant, and G. W. Ragland, appellee, a manifest error hath happened, to the great damage of the said The National Bank of Daingerfield, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
45 ment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, and, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By A. GROSENBACHER, *Deputy.*

Allowed this the 29th day of December, 1899.

JOHN H. JAMES,
Chief Justice Court Civil Appeals,
4th Supreme Judicial District of Texas.

Endorsed: Filed in the court of civil appeals, at San Antonio, Texas, Dec. 30, 1899. H. E. Hildebrand, clerk.

46 *Cost Bill in Court of Civil Appeals, San Antonio, Texas.*

THE NAT. BANK OF DAINGERFIELD, Appellant, *vs.* G. W. RAGLAND, Appellee. | No. 1808. From Morris County.

Record Filed Feb'y 6, 1899.
How decided—affirmed.
Disposed of June 14, 1899.
Opinion by Fly, A. J.

Filing record	$ .50
Docketing cause	.50
Appearances	1.00
Filing briefs and other papers	2.00
Notices	3.00
Orders	2.00
Judgment	1.00
Recording opinion	2.25
Certificate with seal	.50
Taxing cost	.50
Certified copy of bill of costs	1.00
Mandate	1.50
Filing and docketing motion	.35
Precept	1.00
Making certified copy of motion	1.00
Sheriff's fees (paid to sheriff of Bowie county)	3.25
Costs in court of civil appeals at Dallas	6.65
Transcript to supreme court	1.50
Express charges to and from supreme court	.50
Costs in supreme court of Texas	7.00
Transcript to Supreme Court of U. S	21.30
Costs due clerk U. S. circuit court	3.70
Total	$62.00

47 SAN ANTONIO, TEXAS, *Jan'y* 11, 1900.

I, H. E. Hildebrand, clerk of the court of civil appeals of the fourth supreme judicial district of Texas, at San Antonio, do hereby certify that the preceding 46 pages are a true and correct copy of the transcript from the lower court to this court, and all proceedings had in this court in cause No. 1808, styled The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee, appealed from the district court of Morris county.

In testimony whereof I have hereunto set my hand with the seal of said court this the same day and date above written.

[Seal Court of Civil Appeals of the State of Texas.]

H. E. HILDEBRAND,
Clerk Court of Civil Appeals,
4th Supreme Judicial District of Texas.

18 In the Supreme Court of the United States.

THE NATIONAL BANK OF DAINGERFIELD, Plaintiff in Error,
vs.
G. W. RAGLAND, Defendant in Error.

To the honorable Supreme Court of the United States:

Now comes the National Bank of Daingerfield, which is a national bank organized under the laws of the United States, and shows to the court:

1st. That G. W. Ragland filed suit in the district court of Morris county, Texas, against The National Bank of Daingerfield, plaintiff in error, for the sum of $557.34, being the penalty provided by U. S. Revised Statutes, art. 5198, for collecting usurious interest on money borrowed by said Ragland from this bank and sought to recover double the amount of interest he paid, by virtue of the second clause of said art. 5198.

2nd. The defendant, this bank, specially set up in its answer and claimed and relied on a privilege and immunity under and by virtue of a statute of the United States—that is, said bank set up and claimed and relied on the plea that plaintiff's suit for said penalty was not filed and commenced within two years from the time the usurious transaction occurred.

3rd. The facts showed that the usurious interest was reserved when the money was borrowed by Ragland, which was more than two years before the suit was commenced, but said interest was paid less than two years before the action was commenced.

4th. The district court held that the limitation did not begin to run until the usurious interest was paid, and that the cause of action was not barred, and gave judgment for Ragland for the penalty of double the usurious interest paid.

5th. The bank appealed to the court of civil appeals of the State of Texas for the 5th supreme judicial district, at Dallas, Texas, and specially assigned as error the court's action in holding the cause of action not to be barred.

6th. The cause was regularly and legally transferred to the court of civil appeals for the 4th supreme judicial district, holding session at San Antonio, Texas.

7th. On May 17th, 1899, the said court of civil appeals, at
49 San Antonio, affirmed the judgment and held that limitation did not begin to run until the usurious interest was paid, and on June 14th, 1899, overruled the bank's motion for a rehearing, thereby rendering a decision against the privilege and immunity claimed by said bank, that the suit was barred by virtue of the proviso in U. S. Rev. Statutes, art. 5198.

8th. That the said court of civil appeals is the highest court of the State to which the cause can be taken and in which a decision in the cause can be had, the supreme court of Texas having on the —— day of October, A. D. 1899, dismissed the application of your petitioner for writ of error because the judgment of the court of civil appeals was final.

9th. Wherefore the National Bank of Daingerfield prays for a writ of error to remove said cause into the Supreme Court of the United States for revision and correction, and it says the court has committed errors in the trial and decision of said cause as follows:

Assignment of Errors.

1st. The court of civil appeals erred in holding that the limitation on the suit for the penalty for charging and collecting usurious interest did not begin to run until said usurious interest was paid, and that the right to recover the penalty was not barred.

2nd. The court of civil appeals erred in not holding that limitation on the right to recover the penalty began when the usurious transaction occurred, which was when the money was borrowed and when the interest was deducted.

Wherefore the National Bank of Daingerfield prays for a writ of error, and presents herewith a good and sufficient bond, and prays for citation in error.

It prays that the judgment be reversed.

F. H. PRENDERGAST &
J. M. MOORE,
Att'ys for Petitioner, The National Bank of Daingerfield.

The writ of error & supersedeas above asked for is allowed & the security on bond offered herewith is approved this the 29th day of Dec., 1899.

JOHN H. JAMES,
Chief Justice Court of Civil Appeals for the 4th Supreme Judicial District of Texas.

50 [Endorsed:] The National Bank of Daingerfield *vs.* G. W. Ragland. Petition for writ of error. Filed in the court of civil appeals, at San Antonio, Texas, Dec. 29, 1899. H. E. Hildebrand, clerk.

51 UNITED STATES OF AMERICA, *ss:*

To G. W. Ragland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of civil appeals for the fourth supreme judicial district of Texas, wherein The National Bank of Daingerfield is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN H. JAMES,
Chief Justice Court Civil Appeals,
4th Supreme Judicial District of Texas.

Attest: H. E. HILDEBRAND,
Clerk Court Civil Appeals,
4th Supreme Judicial District of Texas.

[Seal Court of Civil Appeals of the State of Texas.]

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, D. H. Hart, clerk of the circuit court of the United States in and for the western district of Texas, hereby certify that the above is a true and correct copy of the citation in error issued out of this court in the case of The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee, pending in the court of civil appeals for the fourth supreme judicial district of Texas.

Witness my hand and the seal of the circuit court of the United States, at office, in the city of San Antonio, Texas, this the 29th day of December, A. D. 1899.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By A. GROSENBACHER, *Deputy.*

52 [Endorsed:] I hereby waive service of the within citation and take notice of the same. This January the 4th, A. D. 1900. J. F. Jones, attorney for G. W. Ragland. Filed in the court of civil appeals, at San Antonio, Texas, Jan. 9, 1900. H. E. Hildebrand, clerk.

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the court of civil appeals for the fourth supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals for the fourth supreme judicial district of Texas, before you or some of you, between The National Bank of Daingerfield, appellant, and G. W. Ragland, appellee, a manifest error hath happened, to the great damage of the said The National Bank of Daingerfield, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment

be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, and, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, San Antonio.]

D. H. HART,
Clerk U. S. Circuit Court, W. D. T.,
By A. GROSENBACHER, *Deputy.*

Allowed this the 29th day of December, 1899.

JOHN H. JAMES,
Chief Justice Court Civil Appeals,
4th Supreme Judicial District of Texas.

[Endorsed:] Filed in the court of civil appeals, at San Antonio, Texas, Dec. 30, 1899. H. E. Hildebrand, clerk.

54 [Endorsed:] Application No. —, fourth district. The National Bank of Daingerfield, appellant, *vs.* G. W. Ragland, appellee. From Morris county, Texas. Transcript from the court of civil appeals, at San Antonio. Filed in supreme court, at Austin, the — day of ——, A. D. 189–. —— ——, clerk, by —— ——, deputy.

Endorsed on cover: File No., 17,638. Texas court of civil appeals, 4th judicial district. Term No., 200. The National Bank of Daingerfield, plaintiff in error, *vs.* G. W. Ragland. Filed February 7th, 1900.

2242

Rec'd

Filed Dec. 31, 1900.

No. [illegible]

Supreme Court of the United States

OCTOBER TERM, A. D. 1900.

THE NATIONAL BANK OF [illegible]

vs.

[illegible]

NO. 200.

Supreme Court of the United States.

OCTOBER TERM A. D. 1900.

✦ ✦ ✦

THE NATIONAL BANK OF DAINGERFIELD,
Plaintiff in Error.

Vs.

G. W. RAGLAND, Defendant in Error.

NATURE AND HISTORY OF THE CASE.

The defendant in error, G. W. Ragland, brought this suit in the District court of Morris county, Texas, to recover of the plaintiff in error the penalty provided by section 5198 of the Revised Statutes of the United States, for charging, receiving and collecting of him unlawful or usurious interest. It is charged in defendant's petition that plaintiff in error "is a National Bank, organized and authorized to transact business under the acts of congress." (Tr. p. 1.) Defendant in error

bases his suit upon various transactions had with plaintiff in error, in which he obtained loans of money, the first of which transactions was on January 1st, 1895, and the last was on the 22nd day of Sept. A. D. 1897, in each and all of which transactions it is alleged that plaintiff in error knowingly charged, reserved, received and collected of defendant a higher or greater rate of interest than was permitted by law. Defendant alleges "that since the 20th day of March, 1896, he has paid to defendant, (plaintiff in error) the sum of two hundred and seventy-eight and 67-100 dollars as interest on the several and various sums of money borrowed." (Tr. p. 6.)

In each and all of the transactions had with plaintiff in error by defendant, in which defendant claims plaintiff charged and collected of him unlawful interest, it is made to appear without controversy, that defendant, when he obtained money from plaintiff, would take his note to plaintiff in error, bank, with sureties thereon, and plaintiff would pay him the face of said note less the amount charged him as interest. In other words defendant's notes were "discounted" by plaintiff. The notes owed by defendant to plaintiff were all negotiable. (Jenkins and Broadfield's evidence Tr. 12.)

Among other defenses urged by plaintiff in error, was the two years' statute of limitation. (Tr. 7-8.)

The court submitted the case to the jury upon special issues, and upon the findings of the jury entered judgment for defendant in error for two hundred and fifty-two and 5-100 dollars with interest and cost. Tr. pp 15-16-17.)

Plaintiff in error filed a motion for a new trial, and among other grounds of said motion, plaintiff in error contended that the court had erred in not sustaining and allowing its plea of limitations of two years as to a large number of the transactions had by defendant with plaintiff, and had erred in rendering judgment for defendant against plaintiff for double the sums received by it in all transactions which occurred more than two years prior to the filing of suit by defendant in error. (Tr. pp. 17–18.)

The court refused plaintiff in error's motion for a new trial and denied to it its plea of limitation. (Tr. p. 18.)

Plaintiff in error duly excepted and appealed its case to the Court of Civil Appeals of the 5th Supreme Judicial District of Texas, and assigned among other errors the action and ruling of the court in refusing and denying its plea of limitation. and prayed for a reversal of said judgment. (Tr. 18–24–25.)

By order of the court, the case was transferred from the 5th to the 4th Supreme Judicial District of the State, and on the day of A. D. 1899, the Court of Civil Appeals of the 4th Supreme Judicial District handed down its decision affirming the decision and judgment of the trial court. (Tr, p. 27–28.)

The plantiff in error in due time filed its motion for a re-hearing, and specially urged as error the refusal of the court to allow and sustain its plea of limitation as to all of the transactions set out by defendant in error's petition occurring more than two years before this suit was filed. (Tr. pp. 28–29.)

The Court of Civil Appeals in a written opinion denied plaintiff in error's motion for a re-hearing, and refused again to allow its plea of limitation. (Tr. p. 29.)

Plaintiff in error applied to the State Supreme Court for a writ of error to the Court of Civil Appeals, but the Supreme Court refused the writ on the ground that it was without jurisdiction, and that the decision of the Court of Civil Appeals was final. (Tr. p. 30.)

The plaintiff in error has duly perfected its appeal to this court by writ of error, from the judgment of the Court of Civil Appeals of the 4th Supreme Judicial District of Texas, and has assigned the following errors committed by said court to-wit:

1st. The Court of Civil Appeals erred in holding that the limitation on the suit for penalty for charging and collecting usurious interest did not begin to run until said usurious interest was paid, and that the right to recover the penalty was not barred.

2nd. The Court of Civil Appeals erred in not holding that limitation on the right to recover the penalty began when the usurious transaction occurred, which was when the money was borrowed and when the interest was deducted. (Tr. p. 32.)

The foregoing assignments of error raise substantially the same question and will therefore be treated as one.

FIRST PROPOSITION UNDER ASSIGNMENT OF ERROR.

Defendant in error's suit being to recover the penalty provided by section 5198 of the Revised Statutes

of the United States, the period of limitation provided by said section began to run against each of the transactions declared on by defendant in error in his petition, when he made and delivered his negotiable promissory notes to plaintiff in error, and received from plaintiff the amount for which said notes were given in money, less the amount the plaintiff in error "discounted" said notes or reserved therefrom as interest, and it appearing that a large number of the transactions sued on by defendant in error, occurred more than two years before the filing of his suit, such transactions and so much of defendant's cause of action based thereon were barred by limitation when his suit was filed.

STATEMENT.

Defendant in error filed his suit March 28th A. D. 1898. (Tr. file mark on petition, page 1.) Of the transactions set out in his petition in which he alleges that the plaintiff in error charged him unlawful interest are the following, with dates of each transaction, amount of money received and amount of interest charged, all as set out in his petition, viz: January 1st, 1895, amount received $348.00, interest charged $42.00; Nov. 12th, 1895, amount received $26.25, interest charged $1.00; Nov. 23rd, 1895, amount received $15.00, interest charged $1.00; Dec. 11, 1895, amount received $46.85, to which was added $1.00 interest; January 22nd, 1896, amount received $597.60, to which was added $125.00 as interest for one year. (On this transaction defendant in error in his evidence states the plaintiff only collected of him as interest the sum of $77.47. Tr. defendant's

evidence page 9.) February 26, 1896, amount received $15.00, to which was added $1.00 as interest, for 60 days; January 2nd, 1896, amount received $125.00, to which was added the sum of $17.15 as interest for said loan till Nov. 1st, 1896. In each and all of these transactions plaintiff in error would take defendant's promissory negotiable note with sureties for amount paid defendant and amount charged as interest as above stated, and the note on its face only bore interest after maturity. (Tr. defendant in error's petition, page 1 to 7 inclusive.)

On these transactions which occurred more than two years previous to the filing of defendant's suit, plaintiff collected as interest $140.62. This amount is included in the jury's finding that defendant paid to plaintiff in error as interest the sum of $233.05. (Tr. p. 15.) It may be stated here in explanation of the judgment being for only $252.05, that the court allowed defendant to recover double the amount of unlawful interest paid by him to plaintiff in error, to wit: $466.10, but deducted therefrom amount due plaintiff by defendant on a promissory note which plaintiff in error plead as a counter claim or offset. (Tr. p.)

AUTHORITIES.

Revised Statutes U. S., Section 5198.

Bobo vs. Peoples National Bank of Shelbyville, 21 S. W. 888.

Henderson National Bank vs Alves, 91st Ky. 142, 15 S. W. 132.

SECOND PROPOSITION UNDER ASSIGNMENT OF ERROR.

The execution of a negotiable promissory note for the interest is "payment" thereof within the meaning of the statute.

AUTHORITIES.

Lebanon National Bank vs. Karmany, 98 Pa. 65.

J. M. TURNER,

Att'y for Plaintiff in Error, The National Bank of Daingerfield.

Supreme Court of the United States.

No. 200.—October Term, 1900.

The National Bank of Daingerfield, Plaintiff in Error, *vs.* G. W. Ragland.	In error to the Court of Civil Appeals for the Fourth Judicial District of Texas.

[April 8, 1901.]

Mr. Justice White delivered the opinion of the Court.

At various times between January 1, 1895, and May 22, 1896, the defendant in error, G. W. Ragland, with sureties, executed promissory notes to the Daingerfield National Bank, for various sums of money loaned to said Ragland. The bank was a national banking association doing business in Daingerfield, Morris County, Texas. Each original note embraced not only the amount of the loan but interest to the date of maturity of the note, calculated at a rate higher than that allowed by law. Certain of the notes were renewed from time to time, the additional interest for the extended period being added, calculated also at a usurious rate. The first payment made upon any of the notes so executed was on November 1, 1896, and all the notes were fully paid prior to February 14, 1898.

On March 28, 1898, Ragland filed a petition in the district court of Morris County, Texas, to recover twice the amount of the interest so as aforesaid paid by him, basing his right to recover upon the provisions of section 5198 of the Revised Statutes of the United States. After deducting as an offset the amount of a note executed by Ragland which had been assigned to the bank by the payee thereof, there was found due to Ragland upon the cause of action stated in his petition the sum of $252.05, and for that amount with interest judgment was entered in favor of Ragland in October, 1898. On appeal to the Court of Civil Appeals the judgment was affirmed, and a motion for rehearing was overruled. (51 S. W. Rep. 661.) An application made to the Supreme Court of Texas for an allowance of a writ of a writ of error was dismissed for want of jurisdiction. Thereafter the Chief Justice of the Court of Civil Appeals allowed a writ of error, and the case is now here for review.

In the assignments of error contained in the record it is conceded by counsel for the plaintiff in error, and the record fully establishes, that the interest, the subject of this controversy, was paid to the plaintiff in error less than two years before Ragland commenced his action. The sole con-

tention in this court is that the courts of Texas erroneously held that the limitation of the statute did not begin to run until the usurious interest was paid. That the courts below, however, did not commit error in this regard is shown by *Brown* v. *Marion National Bank*, (1898) 169 U. S. 415, where, construing sections 5197 and 5198 of the Revised Statutes, it was held that the "usurious transaction," from the date of which the limitation of the statute begins to run, is the time when the usurious interest was actually paid, and not the time when it was *agreed* that it should be paid. This refutes the argument relied on at bar, that the inclusion of the usurious interest as principal in the notes amounted to payment of the interest within the meaning of the statute.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.